

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number Q65268
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number 09/925,331	Filed August 10, 2001
	First Named Inventor Kristiaan Johan Hubert Ghislainus VENKEN	
	Art Unit 2616	Examiner Afsar M. Qureshi
<p style="text-align: center;">WASHINGTON OFFICE <b>23373</b> CUSTOMER NUMBER</p>		
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s).</p> <p>Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record.</p>		
Registration number    28,703		/DJCushing/ Signature
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		_____ October 20, 2006 Date

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of Docket No: Q65268

Kristiaan Johan Hubert Ghislainus VENKEN, et al.

Appln. No.: 09/925,331 Group Art Unit: 2616

Confirmation No.: 6160 Examiner: Afsar M. Qureshi

Filed: August 10, 2001

For: COMMUNICATION METHOD, RELATED BUFFERING ELEMENT AND LINE TERMINATION ELEMENT

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**MAIL STOP AF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the new Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated July 20, 2006, Applicants file this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

The present invention is directed to a system of the type shown schematically in Fig. 1 as including a plurality of network termination elements NT connected in common to a line termination element LT, which is in turn connected to a buffer element BE. The line termination element monitors the conditions of the various network termination elements and communicates the detected condition information to the buffering element. The buffering element, as shown in Fig. 2, includes a buffer part BP for storing cells, and a measuring part for measuring the fill level of the buffer. Information as to the fill level of the buffer along with the information as to

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the conditions of the various network termination elements is taken into account in deciding how to treat (e.g., delete or mark) cells arriving at the buffer.

With the buffering element will sometimes discarding a cell sent to it from the line termination element, the Background section of the present application points out that it is a waste of bandwidth for a network termination element to send to the line termination equipment a cell which will later be discarded by the buffering element. To address this problem, the present invention provides for line termination element to communicate with the buffering element and cause the buffering element to adjust its cell input/output rate in accordance with at least one bandwidth related condition of a network termination element. In this way, transmissions from the network termination elements are anticipated by the buffering element, and none are discarded.

Claims 1, 3, 10 and 11 are rejected for anticipation by Zheng (USP 5,745,477). In Zheng, the Background discussion notes conventional Adaptive Bit Rate (ABR) systems wherein the transmission rate from an end system into the network is controlled in accordance with the state of the network to avoid excessive congestion of the network. Zheng provides an improvement in this type of system by proposing the use of resource management cells in conjunction with an external processor.

In the anticipation rejection of claims 1, 3, 10 and 11 stated in paragraph 3 of the Office action, the examiner equates the destination end system 44 with the claimed plurality of network termination elements, but there is only one such system shown, and this single system is shown in Fig. 1 as including only a signal host. Thus, Zheng fails to teach a line termination element

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coupled to a plurality of network termination elements. The examiner refers to the memory 70 as being coupled to “other end system not shown in the ATM NETWORK 10,” but Fig. 3 shows the memory 70 as being part of the single end system 64, and there is no suggestion that the memory 70 will serve a plurality of network termination elements. Further, and importantly, claim 1 of the present application describes the input/output rate of the buffering element as being adjusted in accordance with at least one bandwidth related condition of the network termination elements, which is just the opposite of Zheng where the transmissions from the end system are controlled in accordance with the congestion state of the network.

Thus, the present invention as defined in claims 1 and 3 contemplates a buffering element which is separated from network termination elements by a line termination element, and interactively adjusts its input/output rate in accordance with a condition of the network elements, whereas Zheng does not teach the connection of a plurality of network termination elements to a buffering element through a single line termination element, and does not teach that the input/output rate of the buffering element is controlled in accordance with a condition of the network termination elements (i.e., Zheng teaches the control of the transmissions from the end systems to the buffer, whereas the present invention controls the input/output rate of the buffering element). Thus, there cannot possibly be any anticipation of claims 1, 3, 10 and 11 by Zheng et al.

In the Office action mailed July 20, 2006, the examiner responds to the above arguments by arguing that, while Zheng only shows an arrangement that is not what is claimed, this is only the preferred embodiment and that modifications and alternatives may be within the scope of

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Zheng's invention. But the test for anticipation is not whether the prior art reference is close enough to the claimed invention that one of skill in the art could make obvious modifications and end up with the claimed invention. This is at best the standard for an obviousness rejection. Anticipation requires that all of the claimed subject matter be taught by a single reference. If the subject matter claimed is not explicitly taught or inherent, there is no anticipation.

Claims 10 and 11 similarly contemplate a line termination element coupled to a plurality of network termination elements and allocating bandwidth amongst them. The examiner refers to receiver 85 as the claimed line termination element, but there is no suggestion anywhere in Zheng that the receiver 85 will allocate bandwidth amongst plural network termination elements. In addition, while the examiner again refers to the memory 70 as the claimed buffering element, Fig. 5 shows that the memory 70 is internal to one end system, and it cannot be used as a buffering element serving plural network termination elements. Accordingly, there is no anticipation of claims 10 and 11.

Claims 7-9 are also rejected for anticipation by Zheng. But Zheng is concerned only with adjusting the transmissions into the network and has no reason to evaluate conditions of the network termination elements and forward those to the buffering element. In addition, as discussed above, the memory 70 and network interface controller are both parts of a single end system, which at best corresponds to a single network termination element in the present case. Accordingly, there is no anticipation of claims 7-9.

The secondary references relied on in the obviousness rejections of claims 4-6 and 12 stated in paragraphs 5-7 of the Office action do not teach the features of the independent claims

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lacking in Zheng, so claims 4-6 and 12 are believed to patentably distinguish over the prior art at least due to their dependence on patentable parent claims.

As discussed above, the invention recited in claims 1, 3 and 8-11 is not anticipated. The examiner argues that the claimed subject matter would have been “within the realization of the skilled artisan in the same field of endeavor,” but this is not the standard for anticipation. Further, it is not true in an event, since Zheng et al neither teaches nor suggests controlling the input/output rate of the buffer in accordance with the condition of a network termination element. Accordingly, it is submitted that the examiner has not presented a *prima facie* case of obviousness, and the rejections must fail.

Respectfully submitted,

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